HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.16477 of 2006

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Between:
U.Jawahar Lal S/o late Sri U.Samba Murthy,
R/o Flat No.305, 3rd Floor, 5th Block, Prajay City,
Miyapur, R.R.District.

…Petitioner

A n d

Union of India rep. by its Ministry of Law, Shastry Bhavan
R.P.Road, New Delhi & others

…Respondents

:: **O R D E R** ::

Counsel for the Petitioner : Sri T.V.L.Narasimha Rao

Counsel for the Respondents : Mr.A.Rajashekar Reddy (Asst. Solicitor General)

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09th August, 2006

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Per G.S.Singhvi, C.J.

In this petition, the petitioner has prayed for striking down second proviso to Section 15 of the Consumer Protection Act, 1986 (for short `the Act') as inserted by Act 62 of 2002. He has further prayed for setting aside order dated 22.7.2006 passed by A.P. State Consumer Disputes Redressal Commission, Hyderabad (for short `the State Commission') in FA (SR) No.1486 of 2005.

Non-petitioner No.3–Mrs.Lavudi Swarajyam filed complaint under Section 12 of the Consumer Protection Act, 1986 with the allegation that she had made two deposits of Rs.30,000/- each in M/s. Nagarjuna Finance Limited and was assured of refund after the date of maturity, but except one cheque of Rs.5,000/-, two other cheques given by the company for refund were dishonoured by the bank. She further averred that despite legal notices, the company had not paid the amount due to her. In the complaint filed by non-petitioner No.3, the petitioner was impleaded as one of the non-applicants.

By an order dated 8.2.2005, the District Consumer Disputes Redressal Forum-II, Hyderabad (for short 'the District Forum') allowed the complaint against non-applicant Nos.1 to 3 (including the petitioner) and held that they are jointly and severally liable to pay Rs.55,000/- with interest at 12% p.a from 12.11.2000 till the date of payment. The District Forum also directed payment of Rs.5,000/- towards compensation and Rs.1,000/- as costs.

The appeal preferred by the appellant against the order of the District Forum was registered as FA (SR) No.1486 of 2005 because he had not complied with the condition of making deposit in terms of second proviso to Section 15 of the Act. By an order dated 8.2.2005, the State Commission granted two weeks time to comply with second proviso to Section 15 of the Act and at the same time made it clear that failure to comply with the said provision may result in dismissal of the appeal. On 27.6.2005, the State Commission granted further time to the petitioner to comply with second proviso to Section 15 of the Act, but he failed to deposit the amount in terms of the said proviso. Consequently, the State Commission dismissed the appeal.

After dismissal of the appeal by the State Commission, non-petitioner No.3 filed execution petition before the District Forum, which has been registered as P.P.No.151 of 2005.

The petitioner has challenged the constitutionality of second proviso to Section 15 of the Act by asserting that the condition of deposit of fifty percent of the amount specified in the order of the District Forum or Rs.25,000/-, whichever is less, is not only arbitrary, but is extremely onerous and wholly unreasonable. He has pleaded that the condition of deposit virtually deprives the aggrieved person of his right to prefer an appeal against the order of the District Forum. On merits, he has pleaded that the ex parte order passed by the District Forum is liable to be declared illegal and quashed on the ground of violation of the rules of natural justice because he had not been given an opportunity to represent his cause in the proceedings of C.D.No.258 of 2004.

We have heard Sri T.V.L.Narasimha Rao, Advocate for the petitioner. Section 15 of the Act reads as under:

" **15. Appeal:** Any person aggrieved by an order made

by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less."

A reading of the provision reproduced above makes it clear that any person aggrieved by order of the District Forum is entitled to prefer an appeal before the State Commission within a period of thirty days. The first proviso to Section 15 empowers the State Commission to entertain an appeal after the expiry of period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within the period of limitation. Second proviso to Section 15 of the Act, which was added by Act 62 of 2002, declares that no appeal shall be entertained by the State Commission unless the appellant has deposited 50% of the amount in terms of the order of the District Forum or a sum of Rs.25,000/-, whichever is less.

Sri Narasimha Rao argued that total absence of discretion to the State Commission to waive the requirement of deposit of fifty percent of the amount specified in the order of the District Forum or a sum of Rs.25,000/- is most unreasonable, inasmuch as, even if the appellant has got a very good case, the State Commission cannot entertain appeal by waiving the requirement of deposit. He submitted that in the absence of discretion conferred upon it, the State

Commission cannot exercise the power to waive the requirement of deposit even in a genuine case. Learned counsel emphasizes that in a case like the present one where the District Forum had proceeded ex parte against the petitioner, he cannot prefer an appeal because he does not have financial resources to deposit 50% of the amount in terms of the order of the District Forum or even a sum of Rs.25,000/-.

In our opinion, the petitioner's challenge to constitutionality of second proviso to Section 15 of the Act is liable to be negatived in view of judgment of the Constitution Bench in **Anant Mills. V. State of Gujarat**[1]. In that case, constitutionality of Sections 406(2)(e) and 411(bb) of Bombay Municipal Corporation Act, 1949 was challenged on the ground that the requirement of deposit of the amount claimed as a condition precedent to the entertaining of an appeal is wholly discretionary. While dismissing the appellant's plea, the Supreme Court observed as under:

> "After hearing the learned counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406 (2) (e) as amended states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the provision to the above clause, where in any particular case the judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part there of, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a rateable value after a bill for any

property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate Judge to relieve the appellant from the rigour of the above provision in case the Judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate Judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved against with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by Section 406 (2) (e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them; it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to

understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute bock in Section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that ",..... no appeal shall lie against an order under sub-section (1) of section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and, there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment' of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission."

(underlining is ours)

The same question was again considered in **Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the city of Ahmedabad**[2]. In that case, a Division Bench of the Supreme Court referred to the judgments in **Anant Mills v. State of Gujarat** (supra),

Ganga Bai v. Vijay Kumar[3], **Shyam Kishore v. Municipal Corpn. of Delhi**[4] and held:

> "Right of appeal which is a statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute, however, in regard to an appeal, the position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well."

In our opinion, the ratio of the aforementioned decisions is squarely applicable to the petitioner's challenge to second proviso to Section 15 of the Act and in that view of the matter the writ petition is liable to be dismissed.

The argument of Shri Narasimha Rao that the absence of discretion having conferred upon the State Commission to waive the condition of deposit makes the provision arbitrary appears very attractive, but cannot be accepted for invalidation of second proviso because it is settled law that hardship in one or more than one case cannot be made a ground for invalidating an otherwise constitutionally valid statutory provision.

If second proviso to Section 15 is read in the light of the objects of the 1986 Act, we do not find anything unreasonable in the prescription of the requirement of deposit of fifty per cent of the amount in terms of the order passed by the District Forum or a sum of Rs.25,000/-, whichever is less. The object of this proviso is to protect the interest of the consumer in the appeals filed against the decisions

of the District Forum. Therefore, insistence of deposit of specified sum cannot be treated as unreasonable or arbitrary.

For the reasons stated above, we hold that the second proviso to Section 15 of the Act does not suffer from any constitutional infirmity and the writ petition is liable to be dismissed. Ordered accordingly.

At this stage, Sri T.V.L.Narasimha Rao, learned counsel for the petitioner submitted that his client may be permitted to deposit Rs.25,000/- in terms of second proviso to Section 15 of the Act and the State Commission may be directed to revive the appeal. This request of the learned counsel is disposed of with the observation that the petitioner shall be free to make an application before the State Commission for revival of the appeal by showing that he has deposited Rs.25,000/- in terms of second proviso to Section 15 of the Act. The petitioner may also rely on the judgment of the Supreme Court in **Shyam Kishore v. Municipal Corporation of Delhi**[5] for seeking revival of the appeal.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

09th August 2006

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Note:
Registry is requested to mark L.R. copy.
(By order)
svs
PS to HCJ

[1] AIR 1975 SC 1234

[2] (1994) 4 SCC 468

[3] (1974) 2 SCC 393

[4] (1993) 1 SCC 22

[5] (1993) 1 SCC 22